



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-11-10 et seq.
Regulation Title:	Public Participation Guidelines
Action Title:	Amend
Date:	Enter Date

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation establishes procedures for involving the public in the development of regulations by the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department). The regulation (i) requires the Department to maintain a mailing list of persons and organizations that will be notified of the formation and promulgation of regulations; (ii) allows individuals to petition the Department to develop new regulations or amend existing regulations; and (iii) describes the process for convening an advisory committee to provide technical assistance to the Department in the formation and adoption of regulations. This regulation was promulgated in 1995.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

There are two sections of the Code of Virginia that provide the legal authority for this regulation. Virginia Code § 37.1-10 authorizes the State Board for Mental Health, Mental Retardation and Substance Abuse Services (State Board) to promulgate rules and regulations that are necessary to carry out provisions of the law. Virginia Code § 9-6.14:7.1 requires the Board to promulgate public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Office of the Attorney General confirms that the Board has the legal authority to promulgate this regulation and is required to do so.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The Department published a notice of this periodic review in the Virginia Register of Regulations on July 2, 2001. A notice of this review was also sent to approximately 400 interested persons and organizations requesting suggestions for improving the content and clarity and to seek comments regarding the effectiveness of the regulation in achieving its stated goal. No comments were received.

Although the public did not offer suggestions for improving the content or clarity of the regulation, the Board believes that there are several areas of this regulation that should be updated or revised. Specifically, the regulation consistently refers to the Department of Mental Health, Mental Retardation and Substance Abuse Services as the entity responsible for promulgating regulations. This is not consistent with the Virginia Code, which conveys the authority for promulgation of regulations on the State Board. There are also other parts of the regulation that should be updated to incorporate provisions for the use of electronic resources to encourage participation of the public in the formation of regulations.

Because the Board anticipates that only minor revisions are necessary, it does not intend to convene an advisory group to revise this regulation. However, the Board will seek assistance, as needed, from appropriate staff and the public in drafting the revisions to this regulation.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The stated goal of the regulation is:

To clearly articulate opportunities and procedures for public participation in Department of Mental Health, Mental Retardation and Substance Abuse regulatory actions.

There was a general consensus among the participants in this review that the regulation is generally effective in meeting its goal and is an important tool for ensuring that the public has the means to participate in the development of regulations. However, it was determined it is necessary to revise the regulation in order to clarify that the Board rather than the Department has the legal authority to promulgate regulations. It was also determined that the Board would consider revising the regulations to incorporate provisions for the use of technological resources that are available to facilitate public participation. This may include provisions for posting proposed regulations on the Department's web site during the public comment period and references to the Virginia Regulatory Townhall.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The Board has conducted an analysis of the existing regulation and applicable law. Several alternatives for resolving issues identified by this periodic review are listed below.

Alternative 1- No regulation. This alternative was rejected. The Board is required to promulgate this public participation regulation to comply with its statutory mandate. Moreover, by repealing this regulation, the Board would eliminate an important tool for promoting public participation in the development of regulations.

Alternative 2 - No change to the public participation regulation. This alternative was rejected. The existing regulation has not been revised since it was promulgated in 1995 and changes are needed to make it consistent with the Virginia Code. In addition, it was determined that certain provisions should be updated.

Alternative 3 – Amend the regulation. The Board found that the regulation requires minor updates and revisions. Such changes would enhance the effectiveness of the regulation in meeting its specific goal. Therefore, the Board recommends this alternative.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board is recommending that the regulation be amended. With the minor revisions that have been discussed above, the existing regulatory guidance will be enhanced for the agency and the public.

Substance

Please detail any changes that would be implemented.

The regulation will be revised to clearly indicate that the Board rather than the Department has the authority to promulgate regulations consistent with the Code of Virginia. In addition, certain provisions would be expanded or revised to provide guidance for the appropriate use of electronic resources, i.e. posting proposed regulations on the Department’s web site. Other appropriate use of technology will be considered for inclusion in the regulatory provisions.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendment to this regulation would enhance the opportunities for public participation in the process for development and promulgation of the Board’s regulations. In this way, the Board will have a better means for considering the concerns and interests of the families when developing regulations. This regulation respects the authority and rights of parents in education, in education, nurturing, and supervising their children. It has no negative impact on economic self-sufficiency, self-pride, the assumption of personal responsibility, family income or marital commitment.